

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TROY K. MILLER and,  
GAIL ANN MILLER

Plaintiffs

v.

WILLIAM R. YOST and  
BEVERLY K. ROCKOVICH,

Defendants

No. 14-2705

Carole J. Walbert, Esquire  
John R. Kantner, Esquire

Counsel for Plaintiffs  
Counsel for Defendants

DECISION AND ORDER OF COURT

Serfass, J. - June 23, 2017

On November 25, 2014, Plaintiffs, Troy and Gail Ann Miller (hereinafter "Plaintiffs"), commenced the instant action via complaint against Defendants, William Yost and Beverly Rockovich (hereinafter "Defendants"), seeking to have this Court enjoin said Defendants from obstructing a gravel pathway between their common property lines. Plaintiffs assert that due to their continued use of the gravel pathway for a period in excess of twenty-one (21) years, they have acquired an easement over the pathway, either as an express easement, an implied easement, a prescriptive easement, or an easement by necessity.

On March 9, 2015, Defendants filed an answer denying the existence of any easement claimed by Plaintiffs. Defendants also filed new matter and a counterclaim averring that they have

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acquired an easement of their own by maintaining a fence on Plaintiffs' property in excess of twenty-one (21) years. Defendants also seek damages resulting from Plaintiffs' alleged trespass onto their property to remove the fence.

A non-jury trial was held before this Court on January 13, 2017. Upon review of the proposed findings of fact, conclusions of law and post-trial brief submitted by Defendants' counsel on March 21, 2017<sup>1</sup>, and careful consideration of the evidence presented at trial, we make the following:

#### FINDINGS OF FACT

1. Plaintiff, Troy Miller, is the son of Plaintiff, Gail Miller.

2. Plaintiff, Troy Miller, is the sole record owner of the property situated at 27 Shady Lane, Kidder Township, Carbon County, Pennsylvania;

3. Plaintiff, Gail Miller, is the sole resident of the property situated at 27 Shady Lane, Kidder Township, Carbon County, Pennsylvania (hereinafter "Plaintiffs' property");

4. Defendants, William Yost and Beverly Rockovich, are two of the three current record owners of the property situated directly northeast of Plaintiffs' property (hereinafter "Defendants' property");

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<sup>1</sup> Plaintiffs filed no proposed findings of fact, conclusions of law nor post-trial brief.

5. On December 29, 1944, Plaintiffs' predecessor in title, Frank J. Miller, purchased Plaintiffs' property from Albert Henning, Howard Henning and Martha Henning;

6. During that same year, Defendants' predecessors in title, Melvin and Emma Boyer, purchased Defendants' property, also from Albert Henning, Howard Henning and Martha Henning;

7. At some point, unknown to this Court, Defendants' predecessors in title, William and Alma Yost, became the record owners of Defendants' property<sup>2</sup>;

8. On February 20, 1948, Frank Miller sold Plaintiffs' Property to William and Alma Yost for the sum of one dollar (\$1.00).

9. Eventually, ownership of Plaintiffs' property reverted back to Frank Miller;<sup>3</sup>

10. Plaintiff, Gail Miller, became a record owner of Plaintiffs' property during the 1970's;

11. As late as 1986, William Yost erected a chain link fence which stops before it reaches the side of Defendants' house;

12. Defendants' house faces Mud Run which is the creek behind the parties' properties;

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<sup>2</sup> The parties have not entered into evidence any document which shows how William and Alma Yost became the record owners of Defendants' property, but the parties have stipulated to the validity of the transfer of ownership from the Estate of Alma Yost to William and Beverly Yost, and Beverly and Bernard Rockovich.

<sup>3</sup> Likewise, there is no document of record which proves that Frank Miller regained possession of Plaintiffs' property, but the parties have stipulated to the validity of the transfer of ownership of Plaintiffs' property from Gail Miller to Troy Miller.



13. As early as 2000, Defendants extended the aforementioned fence along the same line so as to encompass Defendants' backyard;

14. On May 9, 2003, as co-executors of their Mother's estate, William and Sandra Yost transferred Defendants' property to William and Beverly Yost, and Bernard and Beverly Rockovich, at which point each couple acquired an undivided one-half interest in Defendants' property; and

15. On May 9, 2006, Plaintiff, Gail Miller, sold Plaintiffs' property to her son, Plaintiff, Troy Miller, and he became the sole record owner of Plaintiffs' property;

#### DISCUSSION

This Court is currently faced with the following three issues:

1. Whether Plaintiffs' complaint and Defendants' counterclaim must be dismissed due to the failure to join an indispensable party;
2. Whether Plaintiffs have gained a right-of-way interest to continue using the roadway connecting the parties' respective properties; and
3. Whether Defendants gained a possessory interest in property not included in their deed by extending an existing fence and maintaining the new fence line for a period in excess of twenty-one (21) years.

Before turning to the merits of the issues raised by both parties, we must address a jurisdictional issue raised by

Defendants in their proposed findings of fact and conclusions of law. Here we note that even if Defendants had not raised the issue, this Court has a duty to do so *sua sponte*. Huston v. Campanini, 346 A.2d 258, 259 (Pa. Cmwlth. 1975). Specifically, Defendants contend that this Court lacks subject matter jurisdiction because Plaintiffs failed to join an indispensable party to this action, namely Bernard Rockovich. A party is indispensable when:

he has such an interest that a final decree cannot be made without affecting it, or leaving the controversy in such a condition that a final determination may be wholly inconsistent with equity and good conscience. That is to say, his presence as a party is indispensable where his rights are so connected with the claims of the litigants that no decree can be made between them without impairing such rights.

Burkett v. Smyder, 535 A.2d 671, 674 (Pa. Super. 1988). To determine whether Bernard Rockovich is an indispensable party in the case now before the Court, we must consider the following four (4) factors: "1. Do absent parties have a right or an interest related to the claim?; 2. If so, what is the nature of the right or interest?; 3. Is the right or interest essential to the merits of the issue?; and 4. Can justice be afforded without violating the due process rights of absent parties?" Northern Forests II, Inc. v. Keta Realty Co., 130 A.3d 19 (Pa. Super 2015). The courts of this Commonwealth have routinely held that an individual who holds a property interest in the subject matter of a dispute is an indispensable party. See Barren v. Dubas, 441 A.2d 1315 (Pa. Super.

1982) (all owners of the servient estate have a material interest in the litigation and should be joined, regardless of whether the owner is involved with the interference or obstruction of the alleged easement); and Zerr v. Department of Environmental Resources, 570 A.2d 132 (Pa. Cmwlth. 1990) (even parties with a limited property interest, such as the owner of mineral rights, are indispensable parties in an action for quiet title). If an indispensable party is not joined, the trial court is deprived of subject matter jurisdiction. See Pa.R.Civ.P.2227; Fiore v. Oakwood Plaza Shopping Center, 585 A.2d 1012 (Pa. Super. 1991); and Burkett v. Smyder, 535 A.2d at 674.

In 2003, the co-executors of Alma Yost's estate conveyed a one half, undivided interest to William and Beverly Yost. The remaining one half, undivided interest was conveyed to Beverly and Bernard Rockovich. However, the only defendants named in the instant action are William Yost and Beverly Rockovich. Although, Beverly Yost is now deceased, Bernard Rockovich is still living. Since Mr. Rockovich is alive and has a possessory interest in the real property at issue, he is an indispensable party to both Plaintiffs' and Defendants' causes of action.

Applying the factors set forth in Northern Forests II, Inc. v. Keta Realty Co., we find that Bernard Rockovich is an indispensable party to the instant action. Mr. Rockovich has an ownership interest in the private roadway where Plaintiffs claim



their right-of-way and he has an alleged ownership interest in the property enclosed by Defendants' fence extension. Each of these interests is directly related to the claims at issue. Moreover, the interests of Bernard Rockovich are essential to the merits of each claim because his property interests are directly tied to those of the current named Defendants. Lastly, if this Court were to rule on these issues, the property interests of Mr. Rockovich could be diminished without the opportunity for him to participate in these proceedings, thus undercutting his due process rights.

In light of the holding in Barren v. Dubas and Hartzfeld v. Green Glen Corporation, 552 A.2d 306, 310 (Pa. Super. 1989), it is apparent that Bernard Rockovich is an indispensable party to this litigation. Barren makes it clear that all property owners of the servient estate are indispensable parties to a property dispute. With regard to Plaintiffs' claims, Mr. Rockovich is a co-owner of the servient estate as indicated by the 2003 deed which grants to him and his wife an undivided one-half interest in Defendants' property. Additionally, he is an indispensable party to Defendants' counterclaim because he has a property interest in the outcome of that matter in that his rights in the subject property could be adversely affected by a determination in his absence. Hartzfeld v. Green Glen Corporation, 552 A.2d at 310.

Based upon these facts, we find that this Court lacks subject matter jurisdiction to adjudicate the remaining issues raised by

the parties. Fiore v. Oakwood Plaza Shopping Center, 585 A.2d 1012. Even if we were to issue a ruling on the two remaining issues, our verdict on those matters would be void. Barren v. Dubas, 441 A.2d at 1316. Therefore, having found that this Court lacks subject matter jurisdiction in this action, we decline to consider any additional issues.

Based upon our Findings of Fact and analysis of the relevant legal authority as set forth hereinabove, we reach the following:

#### CONCLUSIONS OF LAW

1. Bernard Rockovich possesses an undivided one-half interest in Defendants' property;

2. Bernard Rockovich was not joined as a party to this action even though Plaintiffs knew that he possessed an ownership interest in the aforesaid property as evidenced by their attachment of the 2003 deed as an exhibit to the complaint;

3. If the property claims at issue were to be adjudicated by this Court without joining Bernard Rockovich as a party, his due process rights would be violated;

4. As an individual with a possessory interest in what would be the servient estate if this Court were to determine that Plaintiffs have a right-of-way to use the subject roadway, Bernard Rockovich is an indispensable party to



Plaintiffs' cause of action; Hartzfeld v. Green Glen Corporation, 552 A.2d at 310;

5. Bernard Rockovich is also an indispensable party to Defendants' counterclaim because he is a co-owner of real property in an action directly affecting his rights to that property and, therefore, he has a property interest in the outcome of Defendants' cause of action in that his rights in the subject property could be adversely affected by a determination in his absence; Id;

6. The failure to join all indispensable parties deprives this Court of subject matter jurisdiction to make a determination on the substantive issues raised in this action; and

7. The absence of Bernard Rockovich as a party in this action renders any order or decree of this Court null and void for want of jurisdiction. Columbia Gas Transmission Corporation v. Diamond Fuel Company, 346 A.2d 788 (Pa. 1975).

Upon careful consideration of the above Findings of Fact and Conclusions of Law, and having determined that the Court lacks subject matter jurisdiction in this action, we enter the following:

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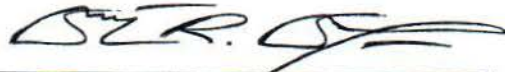
AND NOW, to wit, this 23<sup>rd</sup> day of June, 2017, following a Non-Jury Trial held before the undersigned in the above-captioned action, and upon review of Defendants' post-trial submissions, and in accordance with our Decision bearing even date herewith, it is hereby **ORDERED and DECREED** as follows:

1. Plaintiffs' complaint is **DISMISSED**, without prejudice, for lack of subject matter jurisdiction;

2. Defendants' counterclaim is likewise **DISMISSED**, without prejudice, for lack of subject matter jurisdiction;  
and

3. Pursuant to Pa.R.C.P. No. 227.1, the parties may file motions for post-trial relief within ten (10) days after the filing of our Decision and Order in this matter.

BY THE COURT:

A handwritten signature in black ink, appearing to read "SERFASS", written over a horizontal line.

Steven R. Serfass, J.